

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:09-cr-0182-TWP-DLP
)	
WALTER POWELL,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On October 23, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on August 30, 2019. [Dkt. 55.] Defendant Powell appeared in person with his appointed counsel Michael Donahoe. The government appeared by Kathryn Olivier, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Brent Witter.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Powell of his rights and ensured he had a copy of the Petition.
2. After being placed under oath, Defendant Powell admitted Violation Nos. 1, 2, 3, 4, and 5 as set forth in the Petition. [Dkt. 55.]
3. The allegations to which Defendant admitted, as fully set forth in the Petition, are:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall not commit another federal, state or local crime.”</p> <p>On August 24, 2019, Mr. Powell was arrested by the Richmond City Police Department and charged in Wayne County Superior Court with Operating a Vehicle While Intoxicated: Prior Conviction (Felony); Operate Vehicle With a Schedule I or II Controlled Substance with Prior Conviction or Under 21; and, Habitual Vehicular Substance Offender.</p> <p>According to the Probable Cause Affidavit, On August 24, 2019, Mr. Powell's [sic] was observed operating a motor vehicle with no headlights. During the course of the traffic stop Mr. Powell underwent field sobriety tests, which he failed and was placed under arrest. He was later transported to Reid Health Hospital for a blood draw, which returned positive [sic] amphetamine, cocaine and MDMA.</p>
2	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>Pursuant to a blood draw as a result of his arrest for new criminal charges on August 24, 2019, Mr. Powell tested positive for amphetamine, cocaine and MDMA.</p> <p>On August 27, 2019, Mr. Powell admitted to the Probation Officer he used methamphetamine approximately 10 days prior.</p>
3	<p>“The defendant shall refrain from the use of alcohol.”</p> <p>On August 27, 2019, Mr. Powell admitted to the Probation Officer he had consumed "a couple" of beers on August 24, 2019.</p>
4	<p>“The defendant shall not have unsupervised contact with a minor child unless approved by the Court. Supervised contact with a minor child must be approved in advance by the probation officer.”</p> <p>As previously reported to the Court, Mr. Powell had contact with minors January 16 to 19, 2017; July 6, 2018; and January 31, 2019. Mr. Powell does not have permission nor a safety plan in place to have contact with minors.</p>

- 5 **“The defendant shall participate in a program of treatment for sexual disorders and shall comply with the rules of the treatment program. The defendant shall pay a portion of the costs in accordance with his/her ability to pay. The Court authorizes the release of the presentence report and available psychological records to the treatment provider, as approved by the probation officer.”**

On August 29, 2019, Mr. Powell was terminated from treatment for failing to follow the rules of the program.

4. The Court finds that:
- (a) The highest grade of violation is a Grade B violation.
 - (b) Defendant’s criminal history category is III.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 8 to 14 months’ imprisonment.
5. The parties jointly recommended a sentence of ten (10) months incarceration with

four years of supervised release to follow. The defendant requested placement at FMC Lexington, Kentucky.

The Magistrate Judge, having considered the factors set forth in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions set forth in the Petition, and recommends that Defendant’s supervised release be revoked, and that Defendant be sentenced to the custody of the Attorney General or his designee for a period of ten (10) months, with forty-eight (48) months of supervision to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. Justification: This condition is an administrative requirement of supervision.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.

3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. Justification: This condition is an administrative requirement of supervision.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. Justification: This condition is an administrative requirement of supervision.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, the probation officer within 72 hours of the change. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation in monitoring the offender for protection of the community and is a requirement pursuant to federal law.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment. Justification: This condition will ensure the offender maintains gainful employment and aid in reducing recidivism.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court. Justification: This condition is aimed at reducing recidivism and to monitor the offender for protection of the community.

12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is aimed at reducing recidivism and for protection of the community.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and for protection of the community.
14. You shall pay the costs associated with the following imposed conditions of supervised release, to the extent you are financially able to pay for substance abuse treatment and substance abuse testing. The probation officer shall determine your ability to pay and any schedule of payment. Justification: This condition will make the offender invest in their sobriety and rehabilitation.
15. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will aid in addressing the offenders history of substance abuse.
16. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage. Justification: This condition will aid in addressing the offender's history of substance abuse.
17. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will assist in ensuring the offender is compliant with a drug-free lifestyle.
18. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption. Justification: This condition will aid in ensuring compliance with a drug-free lifestyle and the offenders rehabilitation.
19. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data

contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches. Justification: This condition will assist the probation in monitoring the offender for protection of the community.

20. You shall not have unsupervised meetings, activities, or visits, or intentional communications with any minor unless they have been disclosed to the probation officer and approved by the court. You shall not have supervised meetings, activities, visits, or intentional communications with any minor unless they have been approved by the probation officer. Before you may request approval for such meetings, activities, visits, or intentional communications (unsupervised or supervised), you must notify the person(s) having custody of any such minor(s) about the conviction in this case and the fact that you are under supervision. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
21. You shall not participate in unsupervised meetings, intentional communications, activities, or visits with persons you know to be a registered sex offender or to have been convicted of a felony sex offense involving an adult or minor, including any child pornography offense, except as disclosed to the probation officer and approved by the court. This condition is not intended to prevent you from participating in treatment programs or religious services with felons in such programs/services so long as the activity has been disclosed as described above. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
22. You shall not enter or remain at a place for the primary purpose of observing or contacting children under the age of 18. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
23. You shall not possess any child pornography or visual depictions of child erotica or nude minors. Any such material found in your possession shall be considered contraband and will be confiscated by the probation officer. Justification: This condition is to assist the probation officer in monitoring the offender and protecting the community. The offender is a convicted sexual offender.
24. You shall participate in a program of treatment for sexual disorders, including periodic polygraph examinations, as directed by the probation officer. The treatment provider should determine the type and timing of such polygraph examinations. The court authorizes the release of the presentence report and available psychological evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will aid in addressing the offenders history of sexual addiction and sexual attraction to

minors. It will also hold the offender accountable while being supervised in the community.


25. You shall consent, at the direction of the probation officer, to having installed on your computer(s), telephone(s), electronic devices, and any hardware or software, systems to monitor your use of these items. Monitoring will occur on a random and/or regular basis. You will warn other occupants or users of the existence of the monitoring hardware or software. To promote the effectiveness of this monitoring, you shall disclose in advance all cellular phones, electronic devices, computers, and any hardware or software to the probation officer and may not access or use any undisclosed equipment. Justification: This condition will assist the probation officer in monitoring the offender for protection of the community.
26. You shall refrain from the use of alcohol. Justification: The offender has a history of alcohol related offenses and this will assist the probation officer in monitoring the offender for the protection of the community.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release as set forth in the Revocation Parameters Worksheet [Dkt. 55-3].

The Defendant is released on his current conditions of supervised released pending the District Judge's action on this Report and Recommendation. Upon designation by the Federal Bureau of Prisons, Defendant Powell is to self-surrender to the United States Marshal's Office in Indianapolis, Indiana. The Magistrate Judge further recommends that the Bureau of Prisons be requested to expedite Defendant Powell's designation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties, on the record, waived the fourteen-day period to object to this Report and Recommendation.

Dated: 25 OCT 2019



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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